

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.233 OF 2006

The Commissioner of Central Excise &
Customs ..Appellant.

V/s.

M/s.Perfect Circle Victor Ltd. ..Respondent.

Mr.K.R.Chaudhary with Parag Vyas for appellant.

Mr.Jitu Morwani i/b. PDS Legalfor respondent.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 30TH AUGUST, 2007.

P.C. :-

Revenue has preferred this appeal on the questions of law as formulated in paragraph 5.

2. We do not propose to go into the merits of the case in view of the order to be passed. In paragraph 2 of the order, the learned Tribunal proceeding on the footing that the provisions of section 11AC are not invoked. A perusal of the show cause notice dated 9th February, 1999 would clearly disclose that it involves Rule 173Q and section 11AC.

3. In so far as para is concerned the Tribunal proceeded on the footing that penalty under section

11AC is beyond the show cause notice on the basis that these were prior to section 11AC was introduced. In the grounds of appeal as raised by the appellant herein in the appeal filed before the Tribunal, it was clearly set out that SCN pertains to October, 1996 to January, 1998. In other words, the said period would be covered, if applicable. In the meantime, we also mention that the decision of Machino Motell(I) reported in 2004(168) E.L.T.466 has been set aside.

4. Considering the above, in our opinion, ends of justice would be met if the impugned order is set aside and matter is remanded back to the Tribunal for hearing the matter afresh on all the questions that arise.

5. Appeal disposed of accordingly.

(F.I.REBELL0, J.)

(J.P.DEVADHAR, J.)